

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MICHAEL J. FAZIO,)	CASE NO. 1:17-CV-842
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
v.)	
)	
ANDREW SAUL,)	
Commissioner of Social Security,)	<u>MEMORANDUM OPINION</u>
)	<u>AND ORDER</u>
Defendant.)	

This case is before the Court on Plaintiff, Michael J. Fazio’s (“Mr. Fazio” or “Plaintiff”) Motion for Attorney’s Fees Pursuant to 42 U.S.C. § 406(b) of the Social Security Act (the “Act”) (ECF #29). Defendant, Commissioner of Social Security (“Commissioner” or “Defendant”) filed a Response to the Motion (ECF #30). Plaintiff’s counsel, Attorney Paulette F. Balin (“Attorney Balin”), asks this Court to issue an Order awarding her \$7,506.50 in attorney’s fees from the past-due benefits owed to Plaintiff pursuant to § 406(b) of the Act.

Plaintiff’s claim generated a total of \$70,026.00 in past-due DAC benefits. (ECF #29). On September 20, 2018, Attorney Balin was granted Equal Access to Justice Act (“EAJA”) fees by stipulation of the parties in the amount of \$6,413.24. (ECF #29). The Social Security Administration sent a Notice of Award dated June 15, 2020, notifying Plaintiff that twenty-five percent (25%) of his retroactive award is \$17,506.50, and that this amount is being withheld from his benefits as attorney’s fees.

Administrative Law Judge (“ALJ”) Joseph Hajjar approved \$10,000.00 in attorney’s fees pursuant 42 U.S.C. § 406(a) for work performed before the administration in the matter. Specifically, ALJ Hajjar authorized a fee of \$4,585.00 for Attorney Matthew J. Shupe and a fee of \$5,415.00 for Attorney Paulette F. Balin.

Defendant filed a Response to Plaintiff's Motion for Attorney's Fees (ECF #30), indicating that he does not object to the fee request under § 406(b) and asks this Court to order Plaintiff's counsel to refund the EAJA award of \$6,413.24 when received, as counsel is required to refund the claimant the lesser of the § 406(b) and EAJA awards.

Pursuant to 42 U.S.C. § 406(b), the Court may award attorney's fees to a successful claimant's counsel for work performed before the Court in a reasonable amount, not to exceed 25% of the total past-due benefits. These fees are awarded from the past-due benefits awarded to the claimant and are withheld from the claimant by the Commissioner. *See Gisbrecht v. Barnhart*, 535 U.S. 789 (2002).

The \$7,506.50 fee requested under § 406(b) for services rendered only in federal court represents ten percent (10%) of the past-due SSDI benefits paid on Plaintiff's account. When combined with the \$10,000.00 authorized in § 406(a) fees, the requested § 406(b) fees do not exceed 25% of the past-due benefits, as consistent with the fee agreement and the law. Accordingly, this Court finds that the amount of \$7,506.50 in attorney's fees is reasonable.

THEREFORE, this Court authorizes a payment to Attorney Paulette F. Balin in the amount of \$7,506.50 in attorney's fees being withheld from Plaintiff's past-due benefits, and that upon receipt of this sum, Attorney Balin will remit \$6,413.24 directly to Plaintiff.

IT IS SO ORDERED.



DONALD C. NUGENT
Senior United States District Judge

DATED: August 14, 2020